

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: BILLY D. MOORE

(Case No. 12162)

A hearing was held after due notice on June 18, 2018. The Board members present were: Mr. Dale Callaway, Mr. Bruce Mears, Ms. Ellen Magee, Mr. John Mills, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a variance from the maximum fence height requirement for an existing structure.

Findings of Fact

The Board found that the Applicant is seeking a variance of 2.5 feet from the 3.5 feet maximum fence height requirement for an existing fence within the front yard setback area. The fence measures 6 feet tall and begins approximately 20 feet from the front property line and runs along the east side of the Property. The variance is needed for 20 feet of the fence closest to the front property line. This application pertains to certain real property located on the north side of Sharptown Road (Route 24), approximately 148 feet west of Old Hickory Road. (911 Address: 6883 Sharptown Road, Laurel) said property being identified as Sussex County Tax Map Parcel Number: 4-32-11.00-40.05.

1. The Board was given copies of the Application, aerial photographs of the Property, a portion of the tax map of the area, pictures, a deed to the Property, and a letter from the Applicant.
2. The Board found that the Office of Planning & Zoning received no correspondence in support of or in opposition to the Application.
3. The Board found that Billy Moore and Lori Moore were sworn in to testify about the Application.
4. The Board found that Mr. Moore stated that he worked with Nanticoke Fence Company to install a white, vinyl privacy fence along the side of his property. Previously, this side of the Property was buffered by bushes and vegetation; particularly near the front corner of the lot. Those bushes have since been removed.
5. The Board found that Mrs. Moore testified that the situation is unique due to issues with the neighboring property adjacent to the fence. The Applicants seek a barrier from that property and she believes that the fence will provide security and peace of mind.
6. The Board found that Mrs. Moore testified that the fence will not alter the essential character of the neighborhood and that the fence does not cause obstruction of views.
7. The Board found that Mrs. Moore testified that the fence is a white vinyl privacy fence measuring 6 feet tall and will require minimal upkeep. The variance is only needed for 20 feet of the fence in the front yard.
8. The Board found that Mrs. Moore testified that there were bushes in the neighborhood and a car recently drove through the bushes.
9. The Board found that Mr. Moore testified that the view from the street was improved by removing the bushes and replacing them with a fence.
10. The Board found that Joseph Patchett and Matthew Patchett were sworn in to testify in opposition to the Application. Joseph Patchett owns the adjacent property on the other side of the fence and Matthew Patchett currently lives on that lot.
11. The Board found that Joseph Patchett testified that the fence diminishes the view down the road and that he cannot see traffic coming down the road. He disliked the

- bushes when they were there and that the bushes blocked the view. He believes that the fence blocks the view now.
12. The Board found that Matthew Patchett testified that he is not against the fence but he opposes the variance request. He believes that the forty (40) feet front yard setback should be met.
 13. The Board found that Matthew Patchett testified that the fence takes away the view down the road. His son rides his bike up and down the road and he can no longer see him to keep an eye on him.
 14. The Board found that Mr. Moore testified that the trees in the front yard block the neighbor's view more than the fence.
 15. The Board found that Mr. Moore testified that and that his neighbor's house sits farther back from the road than his house. Joseph Patchett testified that his house is 88 feet from the road.
 16. The Board found that Scott Wingate, Brenda Wingate, and Lori Phippin were sworn in to testify in support of the Application. Mr. and Mrs. Wingate own adjacent property and Ms. Phippin also lives in the area.
 17. The Board found that Mrs. Wingate testified that it was hard to see down the road with the previous bushes but she can see better with the fence installed and no bushes. She believes that the fence is attractive and is an improvement. Ms. Phippin also testified the road is a busy road and the fence has improved the vision in the neighborhood.
 18. The Board found that four (4) parties appeared in support of the Application.
 19. The Board found that three (3) parties appeared in opposition to the Application.
 20. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board weighed and considered, the Board determined that the application met the standards for granting a variance. The findings below further support the Board's decision to approve the Application.
 - a. The Property is unique as it was previously improved by a natural buffer along its side property line but that buffer was damaged by a recent car accident. The vegetation has since been removed but the Applicants seek the variance to allow a fence to remain along the side property line. The situation is also unique because the Applicants have experienced problems with their neighbor on the other side of the fence. It is clear to the Board that these unique conditions have created an exceptional practical difficulty for the Applicants who seek to retain a reasonably sized fence on the lot.
 - b. Due to the uniqueness of the lot, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Property was previously buffered on the side by natural vegetation which was damaged by a car accident. This vegetation provided a buffer between neighbors who do not get along. The Applicants seek permission to retain a white privacy fence along the border with their neighbor. This fence meets the Code's height requirement except for 20 feet of the fence closest to the road. The fence in the front yard can only be 3.5 feet tall but the fence is 6 feet tall. The Applicants seek to retain this reasonably sized fence but are unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the variance is necessary to enable the reasonable use of the Property as the variance will allow the Applicants to retain the reasonably sized fence on the Property. The Board is convinced that the shape and location of the fence are also reasonable, which is confirmed when reviewing the survey provided by the Applicants.
 - c. The exceptional practical difficulty was not created by the Applicants. The Applicants relied on a fence company to install the fence and the fence did not meet the height requirements. The Applicants also did not damage the

natural vegetative buffer which thereby necessitated the fence. The Board is convinced that the exceptional practical difficulty was not created by the Applicants but was created the lot's unique characteristics and circumstances. The Board also notes that the Applicants have experienced problems with their neighbors and the height of the fence should minimize those problems.

- d. The variance will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare. The Board is convinced that the fence will have no effect on the character of the neighborhood. The pictures of the proposed fence indicate that it is an attractive fence that will not deter visibility in the neighborhood. Neighbors support this application. Opposition argued that the fence would block visibility of the road but the fence is at least 20 feet from the road and the pictures demonstrate that the vegetation which was removed obstructed visibility greatly. The addition of the fence and the removal of the vegetation actually enhances the visibility. Notably, one member of the opposition did not oppose the fence itself. Instead, he opposed the height variance but he did not convince the Board that the height variance would somehow alter the essential character of the neighborhood or be detrimental to the public welfare.
- e. The variance sought is the minimum variance necessary to afford relief and the variance requested represent the least modification possible of the regulation at issue. The Applicants have demonstrated that the variance sought will allow the Applicants to retain a reasonably sized fence on the Property. No additions or modifications to the fence are proposed.

The Board granted the variance application finding that it met the standards for granting a variance.

Decision of the Board

Upon motion duly made and seconded, the variance application was approved. The Board Members in favor were Mr. Dale Callaway, Ms. Ellen Magee, Mr. Bruce Mears, Mr. John Mills, and Mr. Brent Workman. No Board Member voted against the Motion to approve the variance application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY


John Mills
Chairman

If the use is not established within two (2) years from the date below the application becomes void.

Date September 11, 2018